In the Punjab and Haryana High Court at Chandigarh.

RSA No.1747 of 2005

Date of decision: 17.09.2007

K.K. Puri (deceased) represented by LR .... Appellant

Versus

Smt.Krishna Puri and others. ..... Respondents.

Present: Mr.Akshay Bhan, Advocate, for the appellant.

Mr.Arun Palli, Senior Advocate, with
Mr.JS Bedi, Advocate, for the respondents.

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PERMOD KOHLI, J.

Assailing the judgment and decree dated 26.2.2005 passed by the learned Additional District Judge, Chandigarh, affirming the judgment and decree dated 04.03.2003 passed by the learned Civil Judge (Junior Division), Chandigarh, the plaintiff-appellant has preferred this Regular Second Appeal. The plaintiff has remained un-successful in both the Courts below. There are concurrent findings of fact on all the issues. The

challenge to the impugned judgments and decrees is on the following grounds:-

(1) The property i.e. Kothi No. 65, Sector 16-A, Chandigarh, became Joint Hindu Family property after the death of its original owner,Lal Chand Puri and the plaintiff presently has 1/3rd share being one of the successors in interest of late Lal Chand Puri along with respondent Nos.2 and 3.

(2) The affidavit allegedly sworn in by the plaintiff is a forged and fake document and does not confer any right upon Smt. Tara Puri, now deceased, mother of the plaintiff-appellant.

(3) The transfer deed dated 13.05.1968 made by the Chandigarh Administration in favour of Smt. Tara Puri on the basis of alleged affidavit (relinquishment document) is of no consequence as far as the right of the plaintiff is concerned.

It is necessary to briefly notice the factual background of the case.

One Lal Chand Puri, was allotted one plot No.65, Sector 16-A, Chandigarh, whereupon a house has been constructed by him. He died intestate on 04.06.1961 leaving behind his widow Smt.Tara Puri, son-plaintiff K.K.Puri, and two daughters, namely, Smt.Krishna Puri and Smt.Minakshi Bansal. After the death of Lal Chand Puri, his son and daughters are alleged to have sworn an affidavit dated 19.01.1962, relinquishing their rights and interest in the house in favour of their mother Smt.Tara Puri. On the basis of this affidavit, the Chandigarh Administration transferred the property (house in question) by executing a conveyance deed dated 13.05.1968 in favour of Smt.Tara Puri widow of late Lal Chand Puri. In the year 1968, Smt.Tara Puri filed a suit for permanent injunction restraining the appellant herein from interfering in her possession claiming her absolute right on the house in question on the strength of conveyance deed dated 13.05.1968. Smt. Tara Puri during her life time executed a Will dated 09.10.1987 in respect to the aforesaid house in favour of one of her daughters Smt.Krishna Puri. Later on, she died on 30.05.1989. The plaintiff-appellant herein also instituted a suit challenging the Will dated

09.10.1987 executed by Smt.Tara Puri and also the conveyance deed dated 13.05.1968. This suit, however, came to be dismissed for non-prosecution and was never restored. Thereafter, the plaintiff-appellant filed the present suit on 28.8.1989.

The plaintiff-appellant has sought the partition of the suit property claiming 1/3rd share and also a permanent injunction restraining the defendants from transferring the house in question in any manner and also for permanent injunction for protection of his possession in the house. Initially, an interim injunction was issued by this Court on 10.05.2005,which was later on vacated. After the vacation of the interim injunction, Smt.Krishna Puri sold the property to defendants No.3 to 7.

The suit has been resisted by the defendants on a number of grounds. It was contended that the plaintiff has executed the relinquishment deed in favour of Smt.Tara Puri, in whose favour the conveyance deed was executed and she became the absolute owner of the property. She was competent to bequeath the property by way of Will. It was also pleaded that since the plaintiff is not the co-sharer, he has no right to claim partition. The defendants have also raised a plea that the plaintiff

is not entitled to claim any relief in view of the dismissal of his earlier suit challenging the Will and the conveyance deed.

On the pleadings of the parties, the following issues were framed by the learned trial Court:-

(1) Whether the plaintiff is entitled for the separate possession by way of partition to the extent of 1/3rd share in Kothi No.65, Sector 16-A, Chandigarh? OPP

(2) Whether the plaintiff is entitled for permanent injunction as prayed for? OPP

(3) Whether the suit is not maintainable? OPD

(4) Whether the plaint has not been verified? If so its effect? OPD

(4-A) Whether the plaintiff swore affidavit dated 19.1.1962 and thereby relinquished his right/share in the suit property? If so its effect?OPD

(5) Relief.

The learned trial Court took up issue Nos.1,2,3 and 4-A together for consideration and on the basis of its findings, dismissed the suit. The appeal preferred by the plaintiff-appellant in the Court of learned Additional District Judge, Chandigarh, also resulted in dismissal.

I have heard the learned counsel for the parties at length and perused the record of the case.

The first contention of the learned counsel appearing for the plaintiff-appellant is that the suit property is the Joint Hindu Family property. It is undisputed that Lal Chand Puri had acquired the property in question from the Chandigarh Administration and the entire consideration was paid by him. It is equally admitted that the construction was raised by him. Lal Chand Puri died intestate and, thus, the property devolved upon his four legal heirs, i.e. his widow Smt.Tara Puri, son-plaintiff-appellant K.K.Puri, and two daughters,namely, Smt.Krishna Puri and Minakshi Bansal. Therefore, these four legal representatives became co-sharers in the suit property on the death of Lal Chand Puri. Whether they continued to

be co-sharers in the property, depends upon the validity of the affidavit dated 13.05.1968 and conveyance deed dated 05.04.1968.. Admittedly, a conveyance deed has been executed by the Chandigarh Administration in favour of Smt. Tara Puri, transferring title and all rights in the property. PW-4, Inder Pal has made a statement that the property was transferred in favour of Smt.Tara Puri on the basis of the affidavit dated 19.01.1962. Smt. Tara Puri made an application dated 27.01.1967 for transfer of the property in her name. On the basis of the affidavit and her application, the property was transferred in her name (Smt.Tara Puri) on 05.04.1968 by a duly executed and registered conveyance deed. It has been canvassed on behalf of the plaintiff-appellant that since the affidavit is forged and fake and is not registered, neither any surrender on the part of the plaintiff-appellant can be inferred, nor it confers any right upon Smt. Tara Puri so as to secure the transfer in her name excluding other legal representatives particularly, the plaintiff. From the impugned judgments and decrees, it appears that this affidavit has not been challenged in any manner, though the arguments have been advanced that the affidavit is forged one and not registered. The validity of the affidavit is challenged on the following three counts:-

(1) It does not bear the signatures of the plaintiff-appellant.

(2) It is not duly registered document and

(3) The verification of the affidavit is not proper and, thus, it is not a legal and valid document.

It has been urged that the plaintiff has produced Forensic Expert, who reported that the document does not bear the signatures of the plaintiff-appellant. Reference is made to the report of Mr.Chauhan, a Forensic Expert who has stated that there are variations in the signatures of the plaintiff on the document i.e. affidavit dated 19.1.1962 and other admitted signatures of the plaintiff-appellant on record. However, the same expert has proved plaintiff's signatures on the back of affidavit which he signed at the time of the purchase of the Stamp Paper. The learned trial Court has disbelieved the evidence of the Expert Witness and returned a finding that by ocular examination of the affidavit, the plaintiff's signatures with other admitted signatures can certainly be compared and the document bears his signatures, both at the time of the purchase of the stamp paper and on the text of the document. The learned trial Court, accordingly, held that the relinquishment affidavit was duly executed by the plaintiff-appellant. The validity of the affidavit is also being challenged on the ground that it

has not been properly verified. Reliance has been placed on a judgment of this Court in Inder Pal Dua & Anr. Vs. M/s. Yash Garg & Co., 2002 (3) Civil Court Cases, 437, where a learned Single Bench has held that the verification on the affidavit with the words "contents of affidavit are true and correct to the best of my knowledge and belief", carry no sanctity. On the basis of the aforesaid judgment and referring to the verification of the affidavit, it is argued that the affidavit does not confer any right. It has also been argued that the property immovable and having value of more than Rs.100/-, abandonment of right could only be by a registered instrument. Since the right in the property is sought to be relinquished, it is compulsory registrable under Section 17 of the Indian Registration Act and non-registration of this document is fatal and no right can be said to have been conveyed in favour of Smt.Tara Puri, nor it can be considered to be a valid relinquishment of the property. It is a fact that the verification of the affidavit is not proper. It is also a fact that the affidavit has only been attested and is not a registered document, but it is equally a fact that its validity has not been challenged in the suit.

In this regard, the learned counsel appearing for the respondents has argued that a family arrangement needs neither registration

nor it is necessarily required to be reduced into writing. He has relied upon a judgment in the case of Venku Bai Vs. Raji Bai (alias) Rajeswaramma and others, 1987, Civil Court Cases, 49, wherein it has been held as under:-

> "That being the concept of a coparcener under Mitakshara Law, it cannot be said that the plaintiff's husband had an exclusive title to be conveyed and that the persons in whose favour he had relinquished his rights had no title to such property otherwise. Following the decisions referred to above, I hold that as the plaintiff's husband had no exclusive right and title to the suit property, there is no conveyance in favour of the other sharers by the act of his relinquishment. It does not amount to be a transfer of property requiring the execution of a document and registration thereof."

Learned counsel has further referred Kale and others Vs.

Deputy Director of Consolidation and others, AIR, 1976 Supreme Court, 807, wherein the Hon'ble Apex Court made the following observations:-

> "....
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> 10 (4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immoveable properties and therefore does not fall within the mischief of Section 17 (2) (sic) (Section 17 (1) (b)?) of the Registration Act and is,

therefore, not compulsorily registrable."

From the affidavit, it appears that the affidavit only convey the intention of the members of the family to relinquish their rights in favour of their mother. It is not a document which by itself extinguishes or creates any rights. Therefore, non registration of the document is of no consequence. The defective verification in the affidavit also does not in any way help the plaintiff-appellant. It is only a mode of communication to the Chandigarh Administration whereby the other members of the family conveyed their intention not to claim any title over the property in question and requested for transferring the rights in favour of their mother Smt.Tara Puri. The Chandigarh Administration has accepted this mode and consequently executed a valid conveyance deed in favour of Smt. Tara Puri. Therefore, the legality of the affidavit on the technicalities like the defective verification or non-registration, is of little help to the plaintiff-appellant. It is nobody's case that for transferring the property in favour of one amongst the legal heris, valid transfer deed is required from other legal heirs. The plaintiff has neither impleaded the Chandigarh Administration as a party to the suit challenging their action of transferring the property in favour of Smt.Tara Puri, nor the instrument of the transfer has been

challenged in the present suit. The earlier suit filed by the plaintiff-appellant challenging the conveyance deed dated 13.05.1968, came to be dismissed for non-prosecution. Order 9 Rule 9 of the Code of Civil Procedure creates a statutory bar in filing a separate/second suit where a suit is dismissed for non-prosecution. To overcome this statutory prohibition, the plaintiff chose not to challenge the conveyance deed in the present suit. He has, thus, abandoned the challenge to the conveyance deed and by his conduct accepted its existence and validity. The transfer deed, thus, remained un-challenged. The right upon Smt. Tara Puri has been conferred by virtue of conveyance deed and not by virtue of the affidavit. The transfer deed being intact, the plaintiff-appellant cannot be permitted to claim any right in the property and ask for partition.

Apart from the above factual and legal position, no substantial question of law arises in the present appeal warranting interference. I do not find any merit in this appeal and the same is hereby dismissed with no order as to costs.

(PERMOD KOHLI)
JUDGE

September 17, 2007.
BLS

Note: Whether to be referred to Reporter: YES